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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS QUESTIONS, INCLUDING ALTERNATIVE APPROACHES FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Strengthening of the rule of law

Report of the Secretary-General

I. FRAMEWORK

1. At its fiftieth session, the General Assembly, in its resolution 50/179 of 22 December 1995, recalling relevant provisions of the Universal Declaration of Human Rights, the Vienna Declaration and Programme of Action and its own resolutions 48/141 of 20 December 1993 and 49/194 of 23 December 1994 and taking note of Commission on Human Rights resolution 1995/54 of 3 March 1995, as it further considered the importance of the rule of law to the promotion and protection of human rights, took note of the report of the Secretary-General on the subject (A/50/653) and requested him to submit a report to it at its fifty-first session on developments pertaining to the implementation of the resolution.

2. In accordance with resolution 48/141 and as indicated in the previous reports of the Secretary-General (A/49/512 and A/50/653), ultimate authority and responsibility for the coordination and implementation of activities in support of the rule of law through the technical cooperation programme rests with the United Nations High Commissioner for Human Rights, under the overall authority of the Secretary-General. As other agencies and programmes in the United Nations system begin to undertake national assistance programmes in areas that touch upon human rights and the rule of law, it becomes increasingly important that due attention be given to the coordinating and substantive role of the High Commissioner for Human Rights in order to incorporate the substantive expertise of the Centre for Human Rights into such programme activities, to enhance effectiveness of action and to avoid unnecessary duplication.

3. The technical cooperation programme of the Centre offers support to States seeking to strengthen the rule of law and, thereby, to secure the effective enjoyment of human rights and democracy. Such support takes the form of comprehensive country programmes and targeted projects, in the form of advisory services of experts, training courses, workshops and seminars, information and documentation projects, fellowships, and some forms of financial assistance. The programme, as presented in the annual report of the Secretary-General to the Commission on Human Rights on advisory services in the field of human rights (most recently, in document E/CN.4/1996/90), offers assistance based on international standards and rules in the following areas:

(a) Constitution-making. Assistance in the legislative process, especially with regard to the following areas: (i) human rights and fundamental freedoms, as laid down in the Universal Declaration of Human Rights; (ii) guarantees against violations of those rights; (iii) independent judiciary and limits of State powers; (iv) limits of emergency powers, including the problem of permissible derogations of human rights and freedoms under states of emergency in accordance with the international standards; (v) non-discrimination and protection of persons belonging to minorities; (vi) national human rights institutions (human rights commission, ombudsman); (vii) place of international human rights treaties within the domestic legal order;

(b) Legal framework under the constitution, which protects human rights and democracy. Assistance especially in the following areas: (i) immigration, nationality and asylum laws; (ii) penal law and criminal procedure; (iii) prison laws and regulations; (iv) protection of minorities, women, children and other groups requiring special protection; (v) administration of justice; (vi) law on police and other security forces; (vii) remedies to protect human rights under civil law and administrative law; and (viii) any other laws that may have a direct impact on the realization of internationally guaranteed human rights;

(c) Electoral system. Assistance in the legislative process, especially with regard to the following areas: (i) right of everyone to take part in the government of his or her country; (ii) equal access to public service; (iii) criteria of democratic elections (e.g. universal and equal suffrage; the secrecy of the ballot; respect for freedom of opinion, expression, information, assembly and association); (iv) independent review of alleged irregularities; and (v) objective and independent electoral administration;

(d) Institution-building and training. Assistance especially in the following areas: (i) national human rights institutions (national commissions on human rights, ombudsman, etc.); (ii) independent administration of justice (national training regime for lawyers, judges, prosecutors, police and prison officials, which includes attention to their role in the protection of human rights); (iii) training for military (human rights, allegiance to the Constitution and laws of the land and to the democratic government); (iv) mechanisms for conflict resolution; (v) assistance in ratification of or accession to international human rights treaties and training of government officials in reporting under those treaties; (vi) education in human rights, including through model human rights curricula in primary, secondary and post-secondary education and training of teachers for human rights and democracy; (vii) assistance to civil society, including training for

non-governmental human rights organizations, women's groups, labour unions and community organizations; and (viii) training in human rights for mass media.

II. DEVELOPMENTS

4. To enhance inter-agency cooperation and coordination of assistance for the strengthening of the rule of law, the High Commissioner has initiated a series of consultations and contacts with other partners in the United Nations system. Among the measures initiated by the High Commissioner have been, inter alia, meetings with executive heads of United Nations agencies and programmes on matters of policy and coordination, meetings and working-level contacts with agencies and programmes on thematic issues and field-level cooperation. The strengthening of the rule of law has also been placed among the objectives of memoranda of understanding concluded (or being under preparation) by the High Commissioner with various agencies and programmes.

5. Most recently, on 24 and 25 July 1996, a seminar of the World Bank and of the Centre for Human Rights was held in Washington, D.C., with a view to discussing various aspects of possible cooperation between the two institutions. The High Commissioner and the President of the World Bank stressed the need for close contacts and mutual support, inter alia, in envisaging and implementing programmes for the strengthening of the rule of law. Implementation of specific country projects, cooperation between field offices, exchange of information and joint staff training should be the vehicles of cooperation.

6. In accordance with the recommendations of the General Assembly in paragraph 6 of its resolution 49/194 and of the Commission on Human Rights in paragraph 6 of its resolution 1995/54, the High Commissioner, by a letter of 28 August 1995 addressed to all relevant United Nations agencies and financial institutions, has sought to explore possibilities for obtaining from such institutions, acting within their mandates, technical and financial assistance for supporting the Organization's efforts to promote human rights and the rule of law. Replies from several agencies and institutions to the High Commissioner's letters welcomed his initiative for increased cooperation. One of the examples, illustrating how fruitful such cooperation could be, is provided by joint assistance by the High Commissioner and the United Nations Development Programme (UNDP) to countries establishing national human rights institutions (e.g. Latvia and the Republic of Moldova). Another example is the Conference on Refugees, Returnees, Displaced Persons and Related Migratory Movements in the Commonwealth of Independent States (CIS) and Relevant Neighbouring States, which was organized by the Office of the United Nations High Commissioner for Refugees (UNHCR), the International Organization for Migration (IOM) and the Organization for Security and Cooperation in Europe (OSCE) and held in Geneva on 30 and 31 May 1996. The Centre for Human Rights participated in and contributed to the overall process of the CIS Conference since it started in January 1995 and maintained a close working relation with the CIS secretariat by sharing its expertise and providing background materials and contributions concerning, inter alia, application of the principles of the rule of law and human rights to groups of persons under discussion, which were reflected in the final document. The Conference is expected to have a substantial impact on developments in the interested countries.

7. Further evidence of the importance attached to such initiatives by the international community is contained in the Managua Declaration adopted at the Second International Conference of New or Restored Democracies, held at Managua from 4 to 6 July 1994 (A/49/713, annex I). The Declaration, stressing that the stimulus of bilateral and multilateral cooperation, of the private sector, of the United Nations system and of regional and non-governmental organizations is vital for the consolidation of democratic processes and changes in the new or restored democracies, welcomes international aid in support of reforms in countries with new or restored democracies. Based upon the crucial link between democracy, development and human rights, the Declaration states the conviction that international aid will continue to play an important role in alleviating the social costs of transition, in increasing popular participation and in strengthening the rule of law. To those ends, it calls specifically for greater cooperation and coordination among donor countries and institutions and recipient countries.

8. The Managua Declaration, viewed together with the Vienna Declaration and Programme of Action, provides an important framework for the improvement of United Nations efforts aimed at the strengthening of the protection of human rights, democracy and the rule of law in the countries in transition. The vast majority of the countries with which the Centre's technical cooperation programme cooperates, are in fact new or restored democracies. Projects concerning the broadly understood rule of law constitute one of the pillars of this programme, which should therefore be seen as a central vehicle for meeting the concerns expressed in the Managua Declaration and Plan of Action (A/49/713, annex I).

III. CONCLUSIONS AND RECOMMENDATIONS

9. The rule of law, as the prerequisite of the protection of human rights, democracy and sustainable development, should continue to attract the attention of the international community. The rule of law is understood as a human right in itself but also as essential means for the protection of all human rights, civil, cultural, economic, political and social. The High Commissioner for Human Rights, as the central authority for United Nations efforts to assist States in the strengthening of the rule of law, should receive full support in his efforts aimed at enhancing system-wide cooperation. A sustained commitment of all relevant parts of the United Nations towards increased cooperation under the guidance of the High Commissioner, increased resources for both technical and financial assistance and continued substantive programme development are required in order to provide an effective response to the growing demand by the Member States for cooperation with the United Nations regarding the rule of law.

10. In order to make substantive progress in strengthening the rule of law worldwide, the following proposals of the High Commissioner should be pursued, in addition to those identified in the previous reports of the Secretary-General (see, in particular, A/50/653):

(a) Convening by the High Commissioner of a high-level meeting of United Nations agencies and programmes involved in the promotion of human rights and of sustainable development, in order to analyse means, modalities, financing and

allocation of responsibilities for the implementation of a comprehensive United Nations programme of assistance for the rule of law, taking into account the experience of the technical cooperation programme of the Centre for Human Rights;

(b) Development of a structural framework to facilitate ongoing cooperation between United Nations agencies and programmes involved in the promotion of human rights and of sustainable development, aimed at strengthening the rule of law;

(c) Strengthening of the technical cooperation programme of the Centre for Human Rights with regard to the rule of law, through increased financial and staff resources and continued substantive programme development, as described in the previous reports of the Secretary-General (A/49/512 and A/50/653).

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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Situation of human rights in Kosovo

Report of the Secretary-General

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I. INTRODUCTION

1. At its fiftieth session, the General Assembly adopted resolution 50/190 of 22 December 1995, in which it requested the Secretary-General to seek ways and means, including through consultation with the United Nations High Commissioner for Human Rights and relevant regional organizations, to establish an adequate international monitoring presence in the province of Kosovo in the Federal Republic of Yugoslavia (Serbia and Montenegro) and to report thereon to the Assembly.

2. In addition, the Commission on Human Rights, at its fifty-second session, adopted resolution 1996/71 of 23 April 1996, in section VI of which it called upon the Federal Republic of Yugoslavia (Serbia and Montenegro) to ensure full and free access to its territory to all institutions concerned with the implementation of the resolution, including non-governmental organizations; and requested the Governments of the territories within the mandate of the Special Rapporteur to cooperate with her and to provide her on a regular basis with information about the actions it was undertaking to implement her recommendations.

3. Furthermore, the Subcommission on Prevention of Discrimination and Protection of Minorities adopted at its forty-eighth session, in 1996, resolution 1996/8 on the situation of human rights in Kosovo, in which it reiterated the above-mentioned request of the General Assembly.

II. ACCESS BY UNITED NATIONS HUMAN RIGHTS MISSIONS

4. On 23 February 1996, the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) notified the Special Rapporteur on the Commission on Human Rights, Mrs. Elisabeth Rehn, that it had approved the establishment of an office of the Centre for Human Rights at Belgrade. The Government stated that:

> "in an effort to promote cooperation with you and the Centre for Human Rights, the Federal Republic of Yugoslavia is pleased to respond positively and accept your request that an office be opened in Belgrade that would be staffed with the persons of your choice and would assist you in establishing the truth about the human rights situation in the Federal Republic of Yugoslavia."

5. Requests to the Government of the Federal Republic of Yugoslavia for the opening of such an office were first made by the then-Special Rapporteur of the Commission on Human Rights on the situation of human rights in the territory of the former Yugoslavia, Mr. Tadeusz Mazowiecki, during his visits to that country in August and October 1992. The purpose of establishing such an office was to provide assistance to the Special Rapporteur in the collection and analysis of first-hand information on the situation of human rights in that country. In its resolution 1993/7 of 23 February 1993, the Commission requested the Secretary-General to "provide for the appointment of field staff in the territory of the

former Yugoslavia to provide first-hand, timely reports on observance of violations of human rights in their area of assignment". Field staff of the Centre for Human Rights took up posts in 1993 elsewhere in the territory of the former Yugoslavia.

6. The Government of the Federal Republic of Yugoslavia declined repeated requests and recommendations, including recommendations from the Secretary-General, the United Nations High Commissioner for Human Rights and the Assistant Secretary-General for Human Rights for the establishment of a United Nations human rights field presence on its territory. In a letter dated 29 June 1993, the Government's Permanent Representative to the United Nations Office at Geneva wrote that the Federal Republic of Yugoslavia could not accept the appointment of a United Nations field officer in its territory since the reports of the Special Rapporteur were considered by the Government to be "one-sided, unbalanced and tendentious".

7. On 27 July 1995, Mr. Mazowiecki resigned as Special Rapporteur, and on 27 September 1995, the Chairman of the Commission on Human Rights appointed a new Special Rapporteur, Mrs. Elisabeth Rehn. Mrs. Rehn conducted her first mission to the region from 9 to 15 October 1995. On 13 October 1995, she visited Belgrade, and requested in her meetings with government officials that authorization be granted for the opening of an office of the Centre for Human Rights. She followed this with a letter to the Federal Minister for Human Rights on 17 October 1995, making the same request.

8. The Government gave its approval on 23 February 1996. On 15 March 1996, the Centre for Human Rights officially opened its office at Belgrade, and assigned an international human rights officer and a local staffperson to staff the office on a full-time basis. In September 1996 the Government authorized the assignment to Belgrade of a second international human rights officer at the request of the United Nations High Commissioner for Human Rights.

9. Since her appointment in September 1995, the Special Rapporteur has visited the Federal Republic of Yugoslavia four times, and she has travelled to the area of Kosovo twice. In addition, the staff of the Centre for Human Rights' office at Belgrade have visited Kosovo for the purpose of gathering information for the use of the Special Rapporteur. The Special Rapporteur has also visited other areas of the Federal Republic of Yugoslavia since her appointment, including the regions of Vojvodina and Sandzak. She has met with the President of the Republic of Serbia, the Minister for Foreign Affairs, the Federal Minister for Freedoms of the Citizen and National Minority Rights and other senior officials, as well as representatives of non-governmental human rights organizations and other persons concerned with human rights issues. In her report to the Commission on Human Rights dated 14 March 1996 (E/CN.4/1996/63), the Special Rapporteur stated that she was "highly encouraged by the continuing cooperation she has received from all of the parties" covered by her mandate, and she made particular note of the attention to her concerns shown by the Government of the Federal Republic of Yugoslavia. Neither the Special Rapporteur nor the staff of the Centre for Human Rights has noted any significant problems during the last year in moving throughout the country to gather human rights information.

10. The Government of the Federal Republic of Yugoslavia continues to deny permission to visit the country to the expert member of the Working Group on Enforced or Involuntary Disappearances on the special process on missing persons in the territory of the former Yugoslavia, Mr. Manfred Nowak. In a letter to the United Nations High Commissioner for Human Rights dated 12 September 1996, the Permanent Representative of the Government to the United Nations Office at Geneva reaffirmed its earlier denials of permission, stating that it had suspended cooperation with the expert since the activities he had carried out had been beyond his mandate and, thus, he had been abusing his status of expert while politicizing with extreme maliciousness the profoundly humanitarian problem of missing persons.

11. The United Nations High Commissioner for Human Rights visited the Federal Republic of Yugoslavia on 10 and 11 May 1996, during the course of a mission that also took him to Bosnia and Herzegovina and the Republic of Croatia. The High Commissioner met with leading government officials, including the Prime Minister of the Federal Republic of Yugoslavia and the Federal Minister for Freedoms of the Citizen and National Minority Rights, as well as with academic authorities and representatives of non-governmental human rights organizations. In a letter to the Secretary-General dated 17 May 1996, the High Commissioner noted that he had stressed in his meetings with government officials the importance of full cooperation with the Special Rapporteur and the expert on missing persons. The High Commissioner has continued to maintain close communication with the authorities of the Federal Republic of Yugoslavia.

III. ACCESS BY THE CONFERENCE ON SECURITY AND COOPERATION IN EUROPE/ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE

12. On 14 August 1992, by a decision of the fifteenth Committee of Senior Officials, the then-Conference on Security and Cooperation in Europe (CSCE) established a mission of long duration, which had as a task (a) to promote dialogues between authorities concerned and representatives of the communities in three regions (Kosovo, Sandjak, and Vojvodina); (b) to collect information on all aspects relevant to violations of human rights and fundamental freedoms and promote solutions to such problems; (c) to establish contact points for solving problems that might be identified; and (d) to assist in providing information on relevant legislation on human rights, protection of minorities, free media and democratic elections.

13. The mission maintained its presence in Kosovo for 10 months. It carried out its mandate with the formal consent and support of the authorities of the Federal Republic of Yugoslavia, in accordance with a memorandum of understanding signed on 28 October 1992.

14. Following the elections in the Federal Republic of Yugoslavia of December 1992 and its exclusion from CSCE membership, the Government withdrew its formal consent for the mandate. Therefore, the mission departed in July 1993. 1/

15. Despite repeated requests by CSCE/Organization for Security and Cooperation in Europe (OSCE) and the General Assembly to reinstate the monitoring mission, the Federal Republic of Yugoslavia has consistently denied access.

Notes

1/ See Final Report of the CSCE Mission, No. 14/93, of 6 August 1993.